

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 03-58
FM Table of Allotments,)	RM-10608
FM Broadcast Stations.)	
(Pelham and Meigs, Georgia))	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 12, 2003

Released: March 14, 2003

Comments Date: May 5, 2003

Reply comments Date: May 20, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Jerry E. White, Cindy Mitchell White, Donald E. White and Donald F. White d/b/a Mitchell County Television ("Mitchell"), permittee of Station WQLI, Channel 222A, Pelham, Georgia, proposing the reallocation of Channel 222A from Pelham, Georgia, to Meigs, Georgia, as the community's first local transmission service, and the modification of the authorization for Station WQLI to reflect the changes. Mitchell stated its intention to file an application for Channel 222A at Meigs, Georgia.

2. Mitchell filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. In support of the petition, Mitchell states that Channel 222A can be allotted to Meigs, Georgia, at the current authorized site of Station WQLI in compliance with Section 73.207 of the Commission's Rules. Mitchell further states that Meigs is an incorporated community with a population of 1,090 people, its own post office and zip code (31765), local government and police force. According to Mitchell, Station WQLI will serve Pelham with local news since it does not anticipate changing transmitter sites. Mitchell also states that TV Channel 14 is currently operating in Pelham providing local news and information to the community.

4. We believe that the proposal warrants consideration since the reallocation could provide Meigs with its first local aural transmission service. An engineering analysis shows that Channel 222A

¹ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

can be allotted to Meigs in compliance with the Commission's spacing requirements at coordinates **31-04-50 and 84-09-33**. We recognize that the reallocation will remove the potential sole local service from Pelham but not the removal of an existing service since Station WQLI is not constructed. Therefore, we do not consider its removal from Pelham to present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service that the public has become reliant upon.³ Further, since Mitchell is not requesting a change in channel or transmitter site, Pelham will receive a reception service from the station at Meigs once it goes on the air. Although Mitchell has pointed out that TV Channel 14 is allotted to Pelham, the Commission does not consider the availability of video services in a community when examining an FM proposal. There will be no gain or loss areas since Mitchell is not proposing a new transmitter site. Channel 222A falls under priority 3), first local service, at Pelham or Meigs. Mitchell is requested to provide additional information supporting the reallocation since the proposal moves the potential first local service channel from the larger community of Pelham (population of 4,126 people) to the smaller community of Meigs, (population of 1,090 people). As requested, we shall propose to modify the construction permit for Station WQLI to specify operation on Channel 222A at Meigs, Georgia, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 222A at Meigs, Georgia.

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Pelham, Georgia	222A		---
Meigs, Georgia	---		222A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before **May 5, 2003**, and reply comments on or before **May 20, 2003**, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Mitchell, as follows:

Jerry E. White, Managing Partner
 Mitchell County Television
 2586 Old Pelham Road
 Pelham, Georgia 31779

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-

³ See *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (M.M. Bur. 1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (M.M. Bur. 1993); and *Linden and White Oak, Texas*, 15 FCC Rcd 21619 (M.M. Bur. 2001).

delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁴

10. For further information concerning this proceeding, contact Kathleen Scheuerle, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁴ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.